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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT 31 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF GENERAL COUNSEL

CC Docket No. 96-98

In the Matter of

Implementation of the Local
Competition Provisions in the
Telecommunications Act of 1996

To: The Commission

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COMMENTS ON PETITIONS FOR RECONSIDERATION

ProNet Inc. ("ProNet"), pursuant to Section 1.429(f) of the Commission's Rules, hereby comments on Petitions for Reconsideration of the Commission's First Report and Order ("Order")^{1/} in the above-captioned rulemaking proceeding filed by Paging Network, Inc. ("PageNet"), Arch Communications Group, Inc. ("Arch") and Airtouch Paging ("Airtouch"). In response to these petitions, ProNet shows the following:

I. Statement of Interest and Summary

ProNet is a publicly-traded company with extensive experience in developing and operating wide-area paging networks. Since inception, ProNet has provided service to hospitals and medical professionals using Special Emergency Radio Service ("SERS") as well as private carrier paging ("PCP") frequencies in the Business Radio and 929 MHz bands. In 1993, the company initiated an aggressive

^{1/} Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order (released August 8, 1996).

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acquisition program which has catapulted ProNet into the ranks of the nation's largest paging carriers, operating in all PCP and common carrier bands and serving over 1,000,000 subscribers throughout the country. ProNet previously participated in the above-captioned proceeding, concentrating its Comments on the 1996 Telecommunications Act's requirements pertaining to interconnection between incumbent LECs and CMRS providers, and reciprocal compensation for transport and termination of traffic between LECs' and CMRS carriers' networks.^{2/}

ProNet confines these comments to issues affecting commercial mobile radio service ("CMRS") operators providing paging-only services. Specifically, ProNet agrees with PageNet, Arch and Airtouch that the Order's disparate treatment of paging is based upon a mistaken understanding of paging network configuration, and is unduly discriminatory. Accordingly, ProNet urges the Commission to: (1) clarify its Order to affirm that paging companies are entitled to symmetrical rates and the benefits of Section 252(i) of the 1996 Act; and (2) revise its pricing rules to place paging carriers on an equal footing with other CMRS carriers.

II. The Order Incorrectly Distinguishes Between Paging And Other CMRS Carriers

PageNet, Arch and Airtouch convincingly establish that the Commission erred in distinguishing between one-way paging and other

^{2/} See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act").

CMRS services. The Commission must therefore reconsider its decision to carve paging out of the reciprocal compensation universe, confirm that paging carriers are also entitled to symmetrical rates based on LECs' forward-looking costs, and establish default proxies for reciprocal compensation pending cost determinations by state commissions. In so doing, the Commission will restore parity between paging and other CMRS carriers.

Paging system configuration, equipment and network elements are substantially similar to other wireless networks such as cellular, personal communications service ("PCS") and specialized mobile radio ("SMR"). The comparative system diagrams provided by PageNet (Attachment A) and Airtouch (Exhibits 1-8, particularly Exhibit 8) in their respective Petitions for Reconsideration are well-known in the industry and to the Commission; indeed, it appears that the Commission misinterpreted PageNet's initial comments in reaching its mistaken conclusion to differentiate paging from other CMRS services.

Therefore, interconnection and network costs for transport and termination appear roughly equivalent between paging, on the one hand, and other CMRS services, on the other. As PageNet correctly notes (at 7-8), neither the shorter call length nor the absence of voice communication in most paging transmissions results in lower costs.

Finally, the Commission's reasoning that insufficient data exists upon which to conclude that paging carriers' costs approximate LECs' costs, or to establish default proxies, hardly

justifies differentiating paging from its CMRS brethren. While admittedly little data exists regarding paging carriers' actual costs for transport and termination, the same is true for cellular and PCS, which have nevertheless been afforded default proxies and reciprocal compensation pricing in the meticulous framework established by the Order.

III. The Disparate Treatment of Paging Carriers Is Discriminatory and Anticompetitive

Given the lack of technical and practical differences between paging and other CMRS services, unequal treatment of the former will result in discrimination by LECs and will be harmful to competition, in contravention of the 1996 Act itself.

First, the Commission has repeatedly acknowledged that other CMRS services compete directly with paging for the same market share.^{3/} Second, as aptly noted by the petitioners, numerous CMRS operators, including cellular and PCS, also provide paging on an ancillary basis, in direct competition with paging-only operators. In this competitive context, it is illogical and unfair to extend symmetrical rates and default proxies to some competitors, but deny them to others. To let this inequity stand would undermine the Commission's conclusion that paging providers are entitled to reciprocal compensation as any other telecommunications carriers

^{3/} See, e.g., Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, First Report, 10 FCC Rcd 8844, 8854-55; 8863-68 (1995).

(Order at ¶1092).

Third, because network costs are not dissimilar between paging-only and other CMRS carriers, it is unduly burdensome to require paging-only carriers alone to quantify their TELRIC costs without the benefit of either default proxies or the LEC's costs. The costs of producing the requisite cost studies will likely be prohibitive, particularly on a state-by-state basis.

Fourth, ProNet agrees with Airtouch (at 16 and 20) that without symmetrical compensation or default proxies, LECs have a powerful incentive to refuse to negotiate compensation agreements with paging-only carriers (or at least to substantially delay reaching agreements), thereby forcing paging-only companies into state hearings and their attendant cost studies.^{4/} The record in this proceeding provides ample evidence of prior discrimination against paging carriers by LECs including, inter alia, assessment of charges for termination of LEC-originated traffic and telephone numbers,^{5/} and charging excessive "code opening" fees. It would ill-serve the public interest to furnish LECs a fresh justification for disparate treatment of paging carriers.

To ensure non-discrimination, it is imperative that the

^{4/} ProNet agrees with Arch (at 7) and Airtouch (at 19-21) that paging carriers already face an uphill battle before state commissions, many of whom have little experience dealing with paging, and several of whom have in the past sided with LECs in denying paging companies compensation for terminating LEC-originated traffic.

^{5/} Even after issuance of the Order (and prior to stay of the Order by the 8th Circuit Court of Appeals), ProNet continues to face LECs that insist on charging fees for assignment of number blocks.

Commission provide for symmetrical rates based on LECs' forward-looking costs, and establish default proxies for reciprocal compensation, for paging-only carriers.^{6/}

IV. CONCLUSION

WHEREFORE, the Commission should modify its Order to:

(1) Provide for symmetrical rates for transport and termination of traffic based on LECs' forward-looking costs for all CMRS carriers, including paging companies; and

(2) Establish default proxies for mutual compensation between paging companies and LECs.

Respectfully submitted,

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October 31, 1996

^{6/} ProNet concurs with Airtouch that paging carriers are also entitled to the benefits of Section 252(i) of the 1996 Act, and that an affirmative statement to that effect will reduce the likelihood of discriminatory treatment by LECs, should the Commission decline to establish default proxies as requested herein.

CERTIFICATE OF SERVICE

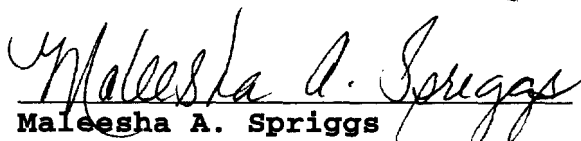
I, Maleesha A. Spriggs, a secretary in the law offices of Gurman, Blask & Freedman, Chartered, do hereby certify that I have on this 31st day of October, 1996 caused copies of the foregoing "Comments on Petitions for Reconsideration" to be sent first class mail, and postage prepaid to the following:

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